

Public Defenders

Do indigent defendants get adequate legal representation?

Over the years, several landmark Supreme Court decisions have established the right of an indigent defendant to the assistance of counsel at public expense. But today critics say the nation's public defender system is in crisis. Roughly 80 to 85 percent of all criminal defendants in state courts, where most crimes are prosecuted, are indigent and represented by some kind of public counsel at an annual cost to states and counties of more than \$3.5 billion. But many public defense lawyers and researchers argue that much more needs to be spent because funding for many indigent defense systems is "shamefully inadequate." Excessive caseloads, high turnover of underpaid lawyers, poor training and supervision and judicial interference are also blamed for many of the deficiencies. According to one expert, in some poorly funded systems in the field, a single public defender handles 1,000 cases a year.



The trial of Brian Nichols, who allegedly shot and killed a judge, a court reporter, a sheriff's deputy and a U.S. customs agent, has cost Georgia nearly \$2 million so far and drained money from other capital cases. At least a dozen other death penalty trials have been delayed because assigned defense lawyers couldn't be paid.

I
N
S
I
D
E

THIS REPORT

THE ISSUES	339
BACKGROUND	346
CHRONOLOGY	347
CURRENT SITUATION	351
AT ISSUE	353
OUTLOOK	355
BIBLIOGRAPHY	358
THE NEXT STEP	359

CQ Researcher • April 18, 2008 • www.cqresearcher.com
Volume 18, Number 15 • Pages 337-360



RECIPIENT OF SOCIETY OF PROFESSIONAL JOURNALISTS AWARD FOR EXCELLENCE ♦ AMERICAN BAR ASSOCIATION SILVER GAVEL AWARD

THE ISSUES

- 339 • Do indigent defendants in criminal cases receive adequate representation?
• Are public defense lawyers beholden to judges and politicians?
• Should states rather than counties fund indigent defense services?

BACKGROUND

- 346 **Limited Rights**
Colonial judges could deny counsel to defendants.
- 346 **Bill of Rights**
The Sixth Amendment adds the right to counsel to the Constitution.
- 349 **Gideon v. Wainwright**
A prisoner's handwritten appeal makes legal history.
- 350 **Gideon's Broken Promise**
Indigent defense services vary widely.

CURRENT SITUATION

- 351 **Who Is Indigent?**
The Supreme Court hasn't addressed the question.
- 354 **Collateral Consequences**
Civil penalties often accompany criminal convictions.
- 355 **Holistic Defense**
Funding shortages are threatening the novel approach.

OUTLOOK

- 355 **Border Pressure**
Immigration arrests are squeezing federal public defenders.

SIDEBARS AND GRAPHICS

- 340 **States Lead in Funding**
Indigent defense systems are fully state-funded in 28 states.
- 341 **Maintaining an Effective Public Defense System**
Bar Association guidelines are not widely followed.
- 342 **Number of Prison Inmates**
The U.S. inmate population has tripled since 1987.
- 343 **How the Supreme Court Helped Poor Defendants**
Rulings in 1932 and 1963 played historic roles.
- 344 **How Dakota County Picks Indigent Defendants**
The Minnesota county uses an income-based approach.
- 347 **Chronology**
Key events since 1791.
- 348 **Crisis in Juvenile Defense**
"It is a right that is not adequately upheld."
- 350 **Constitution Provides Counsel, Due Process**
The Sixth and 14th Amendments are key.
- 352 **Death Penalty Cases Strain Local Budgets**
Some defendants are left without attorneys.
- 353 **At Issue**
Should poor defendants have the right to counsel in civil cases?

FOR FURTHER RESEARCH

- 357 **For More Information**
Organizations to contact.
- 358 **Bibliography**
Selected sources used.
- 359 **The Next Step**
Additional articles.
- 359 **Citing CQ Researcher**
Sample bibliography formats.

Cover: AP Photo/John Bazemore

CQ Researcher

April 18, 2008

Volume 18, Number 15

MANAGING EDITOR: Thomas J. Colin
tcolin@cqpress.com

ASSISTANT MANAGING EDITOR: Kathy Koch
kkoch@cqpress.com

ASSOCIATE EDITOR: Kenneth Jost

STAFF WRITERS: Thomas J. Billitteri,
Marcia Clemmitt, Peter Katel

CONTRIBUTING WRITERS: Rachel S. Cox,
Sarah Glazer, Alan Greenblatt,
Barbara Mantel, Patrick Marshall,
Tom Price, Jennifer Weeks

DESIGN/PRODUCTION EDITOR: Olu B. Davis

ASSISTANT EDITOR: Darrell Dela Rosa

EDITORIAL INTERNS: Joseph Rendeiro,
Kristina Ryan



A Division of
Congressional Quarterly Inc.

SENIOR VICE PRESIDENT/PUBLISHER:
John A. Jenkins

DIRECTOR, REFERENCE PUBLISHING:
Alix Buffon Vance

CONGRESSIONAL QUARTERLY INC.

CHAIRMAN: Paul C. Tash

VICE CHAIRMAN: Andrew P. Corty

PRESIDENT/EDITOR IN CHIEF: Robert W. Merry

Copyright © 2008 CQ Press, a division of Congressional Quarterly Inc. (CQ). CQ reserves all copyright and other rights herein, unless previously specified in writing. No part of this publication may be reproduced electronically or otherwise, without prior written permission. Unauthorized reproduction or transmission of CQ copyrighted material is a violation of federal law carrying civil fines of up to \$100,000.

CQ Researcher (ISSN 1056-2036) is printed on acid-free paper. Published weekly, except; (March wk. 4) (May wk. 3) (July wk. 1) (July wk. 2) (Aug. wk. 2) (Aug. wk. 3) (Nov. wk. 4) and (Dec. wk. 4), by CQ Press, a division of Congressional Quarterly Inc. Annual full-service subscriptions start at \$803. For pricing, call 1-800-834-9020, ext. 1906. To purchase a CQ Researcher report in print or electronic format (PDF), visit www.cqpress.com or call 866-427-7737. Single reports start at \$15. Bulk purchase discounts and electronic-rights licensing are also available. Periodicals postage paid at Washington, D.C., and additional mailing offices. POSTMASTER: Send address changes to CQ Researcher, 2300 N St., N.W., Suite 800, Washington, DC 20037.

Public Defenders

BY BARBARA MANTEL

THE ISSUES

Twenty-one years ago, an intruder broke into a home in Billings, Mont., and brutally raped an 8-year-old girl. The police created a sketch of the rapist based on the victim's description, and an officer thought it resembled a young man in town, 17-year-old Jimmy Ray Bromgard, who had recently been jailed on an assault charge. Eventually, the victim picked out Bromgard in a lineup.

But the young girl told officers she was only "60 to 65 percent" certain she had picked the right man and at trial said she was "not too sure."¹

The prosecution's case rested on the victim's identification and the discovery of several hairs found on her bed sheets. The manager of the state's crime laboratory testified there was less than a one-in-10,000 chance the hairs belonged to someone other than Bromgard — a statistic, it turned out, the state's witness had fabricated.

Bromgard's court-assigned lawyer never hired a forensic expert, nor did he conduct an independent investigation. He filed no motions to suppress the shaky identification, gave no opening statement, prepared no closing statement and failed to file an appeal.² Convicted, Bromgard spent more than 14 years in prison before the Innocence Project used DNA analysis of semen stains to show Bromgard was innocent.

There have been hundreds of similar cases in the United States. A University of Michigan study located 328 exonerations between 1989 and 2003.



Jimmy Ray Bromgard was 17 when he was convicted of raping an 8-year-old girl in Billings, Mont. He spent 14 years in prison before DNA proved his innocence. His court-assigned lawyer didn't hire a forensic expert, conduct an independent investigation or file a motion to suppress the victim's shaky identification. States and counties spend \$3.5 billion a year on indigent defense, but many public defense lawyers and researchers argue much more is needed because too many indigent defense systems are in crisis.

AP Photo/Joe Kohlen

The report said there are perhaps tens of thousands more "miscarriages of justice" in that time period that have gone undetected: "rape convictions that have not been reexamined with DNA evidence; robberies, for which DNA is useless; murder cases that are ignored because the defendants were not sentenced to death; assault and drug convictions that are forgotten entirely."³

"There is simply no better way to prevent wrongful convictions than to provide competent defense counsel," said

Peter Neufeld, co-director of the Innocence Project, in testimony before Congress several months after Bromgard was exonerated. "Competent counsel can uncover police practices responsible for misidentifications, coerced or false confessions and fraudulent forensic science."⁴

The Sixth Amendment to the U.S. Constitution establishes the right to counsel in federal criminal prosecution. Through a series of landmark decisions, the U.S. Supreme Court has extended that right to all criminal prosecutions — state and federal, felony and misdemeanor — where a conviction can result in imprisonment. If someone cannot afford to hire an attorney, the court must assign one. Counsel can be a staff public defender, a private lawyer who accepts such cases for a fee or a contract lawyer who has won a bid to provide these services. Roughly 80 to 85 percent of all criminal defendants in state courts, where the bulk of crimes are prosecuted, are indigent and represented by some kind of public counsel.⁵ The annual cost to states and counties is more than \$3.5 billion a year.⁶

But many public defense lawyers and researchers argue that much more needs to be spent because too many indigent defense systems are in crisis. "I know that because I spend my life traveling around the country and visiting public defenders and court systems," says Robert Spangenberg, whose firm has conducted research for justice organizations in every state. "We have public defender systems in the country where one public defender will handle 1,000 cases in a year," he

States Lead Indigent Defense Funding

Indigent defense systems are fully state-funded in 28 states. They may be in better shape than systems that rely on a mix of state and county funding, since state governments have a wider range of revenue sources than localities.

Indigent Defense Funding by State

The map illustrates the funding sources for indigent defense across the United States. The states are categorized as follows:

- Full state funding (Green):** Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming.
- More than 50% state funding (Yellow):** Alabama, Mississippi, and Texas.
- Full county funding (Light blue):** Alaska, Hawaii, and Pennsylvania.
- More than 50% county funding (Purple):** Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming.

Source: "State Indigent Defense Commissions," *The Spangenberg Group*, Dec. 2006

States Lead Indigent Defense Funding

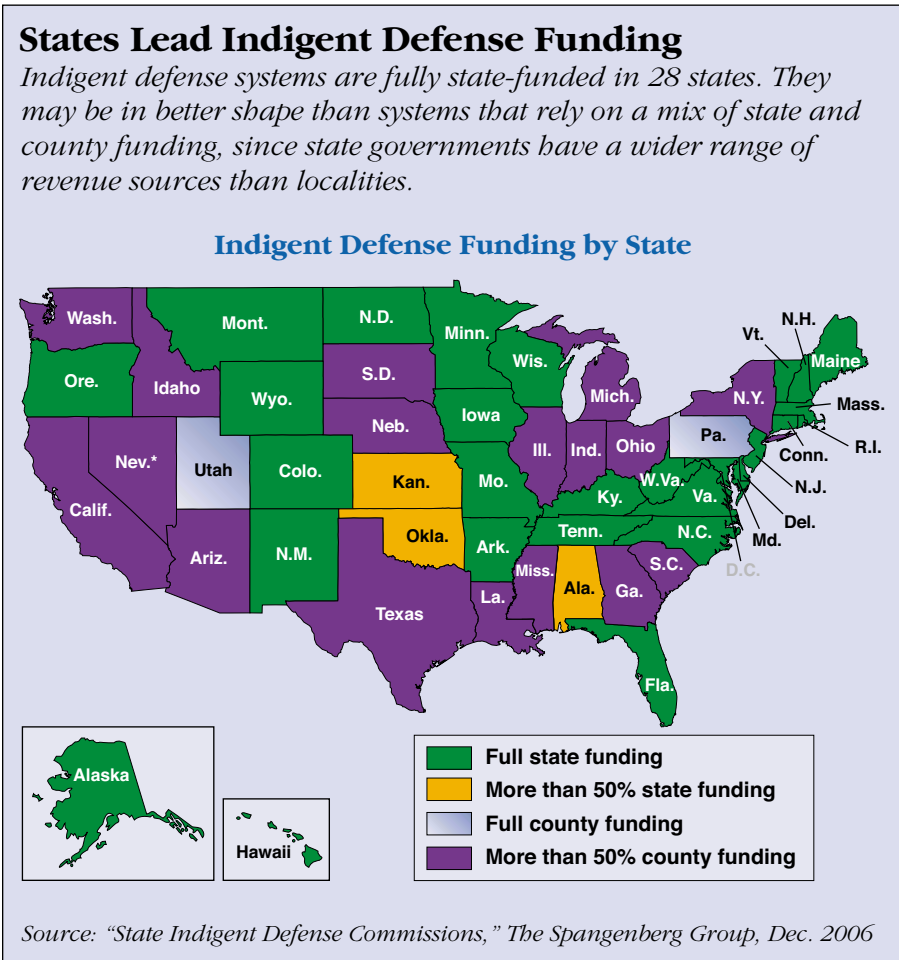
Indigent defense systems are fully state-funded in 28 states. They may be in better shape than systems that rely on a mix of state and county funding, since state governments have a wider range of revenue sources than localities.

Indigent Defense Funding by State

The map illustrates the funding sources for indigent defense across the United States. The states are categorized as follows:

- Full state funding (Green):** Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming.
- More than 50% state funding (Yellow):** Alabama, Mississippi, and Texas.
- Full county funding (Light blue):** Alaska, Hawaii, and Pennsylvania.
- More than 50% county funding (Purple):** Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming.

Source: "State Indigent Defense Commissions," *The Spangenberg Group*, Dec. 2006



States Lead Indigent Defense Funding

Indigent defense systems are fully state-funded in 28 states. They may be in better shape than systems that rely on a mix of state and county funding, since state governments have a wider range of revenue sources than localities.

Indigent Defense Funding by State

The map illustrates the funding sources for indigent defense across the United States. The states are categorized as follows:

- Full state funding (Green):** Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming.
- More than 50% state funding (Yellow):** Alabama, Mississippi, and Texas.
- Full county funding (Light blue):** Alaska, Hawaii, and Pennsylvania.
- More than 50% county funding (Purple):** Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming.

Source: "State Indigent Defense Commissions," *The Spangenberg Group*, Dec. 2006

says. “What kind of representation could one provide with that caseload?”

says. “What kind of representation could one provide with that caseload?”

In 2004, the American Bar Association (ABA) published a report on the state of indigent defense after holding a series of public hearings. Among its findings:

- says. “What kind of representation could one provide with that caseload?”
- In 2004, the American Bar Association (ABA) published a report on the state of indigent defense after holding a series of public hearings. Among its findings:
- Funding for indigent defense is “shamefully inadequate,” often leading to overwhelming caseloads and ineffective representation;
 - Lawyers are often poorly trained and poorly supervised;
 - Prosecutors “too often” seek waivers of counsel and guilty pleas from the unrepresented accused;
 - Judges and elected officials often exercise undue influence over indigent defense lawyers.⁷

says. “What kind of representation could one provide with that caseload?”

In 2004, the American Bar Association (ABA) published a report on the state of indigent defense after holding a series of public hearings. Among its findings:

- Funding for indigent defense is “shamefully inadequate,” often leading to overwhelming caseloads and ineffective representation;
- Lawyers are often poorly trained and poorly supervised;
- Prosecutors “too often” seek waivers of counsel and guilty pleas from the unrepresented accused;
- Judges and elected officials often exercise undue influence over indigent defense lawyers.⁷

But not all agree with the ABA’s conclusions. David LaBahn, director of the American Prosecutors Research In-

stitute, a division of the National District Attorneys Association, says indigent defendants receive adequate representation. "Public defenders are publicly funded, they are well trained and they have access to a great amount of resources to defend their clients," he says. They often offer better representation, he says, than a private lawyer hired by a lower-middle-class person who does not qualify for indigent defense.

stitute, a division of the National District Attorneys Association, says indigent defendants receive adequate representation. "Public defenders are publicly funded, they are well trained and they have access to a great amount of resources to defend their clients," he says. They often offer better representation, he says, than a private lawyer hired by a lower-middle-class person who does not qualify for indigent defense.

Besides, says LaBahn, where funding is tight, prosecutors suffer, too. "Both public defenders and prosecutors are burdened by high caseloads and high turnover."

stitute, a division of the National District Attorneys Association, says indigent defendants receive adequate representation. "Public defenders are publicly funded, they are well trained and they have access to a great amount of resources to defend their clients," he says. They often offer better representation, he says, than a private lawyer hired by a lower-middle-class person who does not qualify for indigent defense.

Besides, says LaBahn, where funding is tight, prosecutors suffer, too. "Both public defenders and prosecutors are burdened by high caseloads and high turnover."

Florida is a case in point. "I shouldn't be asking my parents for money," said Allison Haney, a prosecutor in South Florida who tries rape, robbery and the occasional murder case for an an-

nual salary of just \$50,000 while shouldering more than \$100,000 in law school loans. Assistant Public Defender Ayana Harris also relies on her parents to help pay bills. “It makes me feel like I’m not a complete adult,” said Harris.⁸

nual salary of just \$50,000 while shouldering more than \$100,000 in law school loans. Assistant Public Defender Ayana Harris also relies on her parents to help pay bills. “It makes me feel like I’m not a complete adult,” said Harris. ⁸

Low salaries lead to high turnover. The Miami-Dade County State Attorneys Office lost just under half its lawyers in 2005 and 2006; the public defender’s office lost a third. ⁹

nual salary of just \$50,000 while shouldering more than \$100,000 in law school loans. Assistant Public Defender Ayana Harris also relies on her parents to help pay bills. "It makes me feel like I'm not a complete adult," said Harris.⁸

Low salaries lead to high turnover. The Miami-Dade County State Attorneys Office lost just under half its lawyers in 2005 and 2006; the public defender's office lost a third.⁹

With economists warning the U.S. is in or will soon enter a recession, this is a particularly difficult time for public defenders to go hat in hand to county and state governments. The 28 states that fully fund their public defense systems may be in better shape than the rest that rely on a mix of state and county funding, since states have a wider range of revenue sources than localities. (*See map, left.*)

nual salary of just \$50,000 while shouldering more than \$100,000 in law school loans. Assistant Public Defender Ayana Harris also relies on her parents to help pay bills. "It makes me feel like I'm not a complete adult," said Harris. ⁸

Low salaries lead to high turnover. The Miami-Dade County State Attorneys Office lost just under half its lawyers in 2005 and 2006; the public defender's office lost a third. ⁹

With economists warning the U.S. is in or will soon enter a recession, this is a particularly difficult time for public defenders to go hat in hand to county and state governments. The 28 states that fully fund their public defense systems may be in better shape than the rest that rely on a mix of state and county funding, since states have a wider range of revenue sources than localities. (*See map, left.*)

Still, it's a tough year for states, too, with seven particularly hard hit, according to Raymond C. Scheppach, executive director of the National Governors Association. "They are primarily the states that rode up the housing bubble and are now riding it down," says Scheppach, "and are pretty much in recession." The seven are California, Arizona, Nevada, Florida, Michigan, Ohio, and Minnesota. About a dozen oil and farm states are doing just fine, he says, benefiting from the run-up in oil and commodity prices. The rest may not yet be in recession, but their tax revenues are definitely slowing.

nual salary of just \$50,000 while shouldering more than \$100,000 in law school loans. Assistant Public Defender Ayana Harris also relies on her parents to help pay bills. "It makes me feel like I'm not a complete adult," said Harris. ⁸

Low salaries lead to high turnover. The Miami-Dade County State Attorneys Office lost just under half its lawyers in 2005 and 2006; the public defender's office lost a third. ⁹

With economists warning the U.S. is in or will soon enter a recession, this is a particularly difficult time for public defenders to go hat in hand to county and state governments. The 28 states that fully fund their public defense systems may be in better shape than the rest that rely on a mix of state and county funding, since states have a wider range of revenue sources than localities. (*See map, left.*)

Still, it's a tough year for states, too, with seven particularly hard hit, according to Raymond C. Scheppach, executive director of the National Governors Association. "They are primarily the states that rode up the housing bubble and are now riding it down," says Scheppach, "and are pretty much in recession." The seven are California, Arizona, Nevada, Florida, Michigan, Ohio, and Minnesota. About a dozen oil and farm states are doing just fine, he says, benefiting from the run-up in oil and commodity prices. The rest may not yet be in recession, but their tax revenues are definitely slowing.

Some public defender systems already have been told to make cuts, and at least one is fighting back. In Illinois, the Cook County Public Defender, whose territory includes Chicago, sued the Cook County Board president after his staff was trimmed from about 485 in recent years to as low as 430 in 2007. ¹⁰ In Kentucky, the governor has proposed budget cuts for both public defenders and county prosecutors while recommending increased funding to expand a state

prison. Kentucky expects the number of state prison inmates to grow 6 percent over the next two years, an increase of 1,000 inmates.¹¹ And that's on top of a 12-percent surge last year, the largest of any state.¹²

In fact, a recent study reports that after three decades of growth in America's prison population, for the first time more than one in every 100 adults is now in jail or prison — the highest rate in the world, according to the Pew Center on the States. It is not an increase in crime or population growth that's behind this disturbing figure, however, but the policy choices of federal and state governments, according to the Pew report. For instance, the war on drugs has resulted in hundreds of thousands of convictions, wrote Robert M.A. Johnson, the prosecutor for Anoka County, Minn., in a recent issue of *Criminal Justice* magazine. In addition, he noted, "What was once bad or reckless behavior, such as child endangerment or failure to secure a firearm, which might have exposed a wrongdoer to civil liability, is today becoming a criminal offense punishable by incarceration and fines."¹³ No wonder caseloads for public defenders are often unmanageable.

In this environment of tight budgets, here are some of the questions that public defenders, prosecutors, researchers and government officials are debating:

Do indigent defendants in criminal cases receive adequate representation?

The nation's indigent defense systems are judged against the American Bar Association's *Ten Principles of a Public Defense Delivery System*, issued in 2002. (See box, right.) According to Principle No. 5, "Counsel's workload, including appointed and other work, should never be so large as to interfere with the rendering of quality representation or lead to the breach of ethical obligations, and counsel is obligated to decline appointments above such levels."

Maintaining an Effective Public Defense System

Most of the nation's indigent defense systems are judged against the American Bar Association's Ten Principles of a Public Defense Delivery System. The ABA recommends, among other things, that defense-counsel workloads not interfere with quality representation and that attorneys' experience and ability match the complexity of each case.

- 1** *The public defense function, including the selection, funding and payment of defense counsel, is independent.*
- 2** *Where the caseload is sufficiently high, the public defense delivery system consists of both a defender office and the active participation of the private bar.*
- 3** *Clients are screened for eligibility, and defense counsel is assigned and notified of appointment as soon as feasible after clients' arrest, detention or request for counsel.*
- 4** *Defense counsel is provided sufficient time and a confidential space within which to meet with the client.*
- 5** *Defense counsel's workload is controlled to permit the rendering of quality representation.*
- 6** *Defense counsel's ability, training and experience match the complexity of the case.*
- 7** *The same attorney continuously represents the client until completion of the case.*
- 8** *There is parity between defense counsel and the prosecution with respect to resources, and defense counsel is included as an equal partner in the justice system.*
- 9** *Defense counsel is provided with and required to attend continuing legal education.*
- 10** *Defense counsel is supervised and systematically reviewed for quality and efficiency according to nationally and locally adopted standards.*

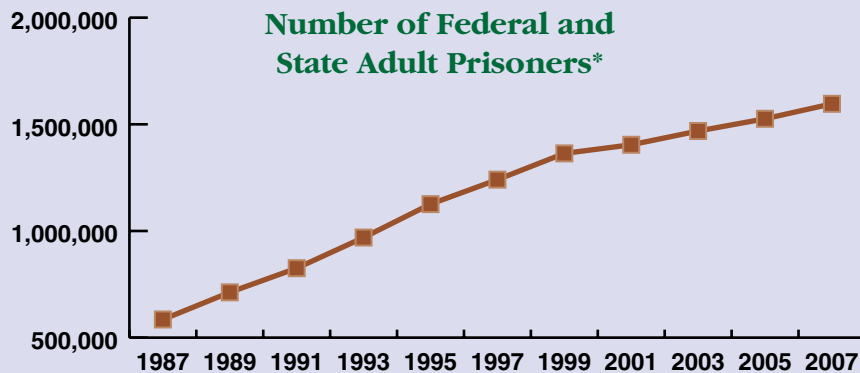
The ABA endorses national standards limiting to 150 the annual caseloads for public defenders who handle felonies. Limits for other types of cases include:

- 400 non-traffic misdemeanors;
- 200 juvenile court cases;
- 200 Mental Health Act cases; or
- 25 non-capital appeals.¹⁴

Some jurisdictions are well known for controlling caseloads of public defense attorneys and providing quality representation, like Washington, D.C., Los Angeles and Massachusetts. But according to numerous studies, far too many do not. In its 2004 report, "Gideon's Broken Promise," the ABA said "oftentimes caseloads far exceed national standards,

Number of Prison Inmates Has Exploded

The U.S. prison population has nearly tripled since 1987, straining the nation's public defender offices.



* Does not include jail inmates

Sources: Bureau of Justice Statistics; "One in 100: Behind Bars in America 2008," Pew Charitable Trusts, February 2008

making it impossible for even the most industrious of attorneys to deliver effective representation in all cases." ¹⁵

In Las Vegas, the average caseload for a public defender is more than twice the national standards. ¹⁶ In Missouri, the caseload has risen by 12,000 cases over six years with no corresponding staff increase. ¹⁷ And in Knoxville, Tenn., one public defender handles approximately 14 accused persons and 24 criminal charges *a day*. ¹⁸

"When caseloads are too high, a couple of things immediately go out the window," says Malia Brink, indigent-defense counsel for the National Association of Criminal Defense Lawyers. A timely investigation, or even any investigation, is usually the first to go, she says; and the number of cases brought to trial declines. "When lawyers are overloaded, they push pleas harder in order to clear cases," says Brink, upending the adversarial process.

In 2006, the ABA's Ethics Committee felt compelled by the growing caseloads to issue a formal opinion about the ethical obligations of overworked public defense lawyers: "If workload prevents a lawyer from providing com-

petent and diligent representation to existing clients, she must not accept new clients." And once a lawyer is representing a client, "the lawyer must move to withdraw from representation if she cannot provide competent and diligent representation." ¹⁹ If the lawyer is a private lawyer assigned cases by the court, she must petition the court. If the lawyer is a staff public defender, she must approach her supervisor. If the supervisor does not make a "reasonable" effort to deal with workload issues, the lawyer must move up the chain of command, and, if necessary, file a motion with the trial court for workload relief. ²⁰

Immediately, opposition to the ethics opinion surfaced. Michael Judge, the public defender for Los Angeles County, wrote that "immense harm is done" when a deputy public defender challenges supervisors and possibly takes her complaint to the trial court. First, clients may lose faith in the ability of the public defender to properly represent them, and second, "Such action invites judges to intervene in the governance of public defender offices," Judge noted, compromising their independence. ²¹

Los Angeles allows the public defender to turn away cases, deflecting the excess to private attorneys, and Judge said he turns down thousands of cases a year. But most public defenders are not allowed to refuse cases, and only a small minority have followed the ABA's recommendation to file motions in court. In Knoxville, the chief public defender recently filed a motion asking that his staff no longer be assigned misdemeanor cases so they can concentrate on felonies, saying that current high caseloads are forcing his attorneys "to compromise their professional and ethical obligations." ²²

But there is enormous pressure on public defenders not to rock the boat, says Norman Lefstein, a professor of law at Indiana University and a former chair of the ABA's Indigent Defense Advisory Group. Lefstein tells of an overworked assistant public defender who would like to file motions in court for workload relief. "But he has been told by his supervisors that he is not authorized to do it," says Lefstein, "and that if he did they would fire him."

Unmanageable caseloads can be traced to decisions by governments to criminalize more kinds of bad behavior and to what the ABA calls "shamefully inadequate" funding. ²³ "Lawmakers are too afraid of being labeled soft on crime and respond by failing to fund the defense," says Brink, who calls that penny-wise and pound-foolish. "You get more appeals and exonerations," says Brink, "if the defense is not an equal partner" with the prosecution.

In fact, Principle 8 of the ABA's *Ten Principles* states: "There should be parity of workload, salaries . . . support staff, paralegals, investigators and access to forensic services and experts between prosecution and public defense." But Brink and others say that is almost never the case. While prosecutors rely on local and state police to investigate crimes and state crime labs to analyze evidence, many public defenders must hire investigators or

forensic experts out of their own budgets or request money from a not always receptive court.²⁴

There is no national study comparing the resources of public defense systems and those of public prosecutors, but a 2007 study in Tennessee sheds light on the controversial nature of parity comparisons.

The report's conclusion is stark: In fiscal 2005, the amount of money available for the prosecution of indigent cases was twice the amount available to their defense. To arrive at that figure, the report's researchers not only counted the budgets of the 31 state District Attorneys General as part of the funding available to prosecute crimes but also added the budgets, or part of the budgets, of several other state agencies, including the Tennessee Bureau of Investigation (TBI).

"Given that all divisions of TBI are involved in investigating and prosecuting crime or supporting such work," said the report, "all . . . of TBI's budget is attributable to the prosecution function."²⁵

LaBahn at the American Prosecutors Research Institute calls that inclusion "incredible" and says the report's authors misunderstood the function of the Bureau of Investigation. "Their job is to investigate — to exclude a suspect or to include one," he says. "Their job is not to prosecute." LaBahn also objects that 20 percent of the Highway Patrol's budget was also counted towards the prosecution function. "While we use the results of their investigations," he says, "they do not work for us or work at our direction."

Are public defense lawyers beholden to judges and politicians?

According to the very first of the ABA's *Ten Principles of a Public Defense Delivery System*, public defense operations must be independent from political and judicial interference, in the selection, funding and payment of defense counsel. But when the bar as-

How the Supreme Court Helped Poor Defendants

Here are key passages from two of the high court's key rulings on behalf of indigent defendants:

Powell v. Alabama (1932) — established the right to court-appointed counsel in state capital proceedings:

The right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel. Even the intelligent and educated layman has small and sometimes no skill in the science of law. If charged with crime, he is incapable, generally, of determining for himself whether the indictment is good or bad. He is unfamiliar with the rules of evidence. Left without the aid of counsel he may be put on trial without a proper charge, and convicted upon incompetent evidence, or evidence irrelevant to the issue or otherwise inadmissible. He lacks both the skill and knowledge adequately to prepare his defense, even though he has a perfect one. He requires the guiding hand of counsel at every step in the proceedings against him. Without it, though he be not guilty, he faces the danger of conviction because he does not know how to establish his innocence.

Gideon v. Wainwright (1963) — established the right to court-appointed counsel in state felony proceedings:

[I]n our adversary system of criminal justice, any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him. This seems to us to be an obvious truth. Governments, both state and federal, quite properly spend vast sums of money to establish machinery to try defendants accused of crime. Lawyers to prosecute are everywhere deemed essential to protect the public's interest in an orderly society. Similarly, there are few defendants charged with crime, few indeed, who fail to hire the best lawyers they can get to prepare and present their defenses. That government hires lawyers to prosecute and defendants who have the money hire lawyers to defend are the strongest indications of the widespread belief that lawyers in criminal courts are necessities, not luxuries. The right of one charged with crime to counsel may not be deemed fundamental and essential to fair trials in some countries, but it is in ours.

From the very beginning, our state and national constitutions and laws have laid great emphasis on procedural and substantive safeguards designed to assure fair trials before impartial tribunals in which every defendant stands equal before the law. This noble ideal cannot be realized if the poor man charged with crime has to face his accusers without a lawyer to assist him.

sociation held a series of public hearings in 2003 on indigent defense in the United States, "witnesses described indigent defense systems that fall far short of these national standards."

The opportunity for judicial influence is greatest in those states where judges pick private attorneys to represent the accused, and public defenders handle a minority of the indi-

gent cases. A Michigan witness at the hearings explained that "the elected judges still pass out the assignments for indigent defense cases to help their political fundraising as much as anything else." A Nevada witness reported that in one county, "judges punish attorneys who request funds to hire experts or 'raise ugly issues that make judges unhappy.'" ²⁶

How Dakota County Picks Public Defenders

Defendants in Dakota County, Minn., who earn less than \$12 per hour are eligible to receive a public defender for all crimes ranging from felonies down to both levels of misdemeanors. As defendants' incomes rise, however, those charged with lesser crimes become less eligible for public defenders. Advocates of such tiered systems argue that defendants with adequate means can afford lawyers for minor charges and should be provided with public defenders only for the most serious crimes, which entail the most cost.

Public Defender Eligibility Grid for Dakota County, Minn.

	High	Medium	Low							
Felony				<i>Eligible for public defender</i>						
Gross Misdemeanors										
Misdemeanors										
Hourly income	\$0			\$12	\$14	\$16	\$17	\$18	\$19	\$20
<hr/>										
Felonies	High:	Murder, kidnapping, criminal sexual conduct, 1st and 2nd degree controlled substance								
	Medium:	Identity theft, burglary, terrorist threats, DWI, aggravated forgery, 3rd and 4th degree controlled substance								
	Low:	5th degree controlled substance, welfare fraud, financial card fraud								
<hr/>										
Gross Misdemeanors	High:	Domestic and other assault, 2nd and 3rd degree DWI, forgery, criminal vehicular operation, 5th degree criminal sex								
	Medium:	Theft, property damage, serving alcohol to minors, offering a forged check								
	Low:	Driving after suspension/revocation, intent to escape tax, school bus stop arm, prostitution, shoplifting								
<hr/>										
Misdemeanors	High:	4th degree DWI, domestic assault, 5th degree assault								
	Medium:	Bad check, theft, careless driving, driving after license revocation/cancellation								
	Low:	Loud party, housing code violations, driving after suspension, minor consumption								

Source: Dakota County, Minnesota

In Dallas County, Texas, some charge that judges send so many more indigent cases to private attorneys than to the public defender's office because private lawyers, many of whom rely on these appointments for their livelihood, contribute to judges' election campaigns. Robert Udashen, former president of the Dallas Criminal Defense Lawyers Association, denied politics is at play and said judges just pick the best defense counsel for a case. "A judge

should have some control over how indigent defense is handled in their court," he said.²⁷

But in states where the judiciary is in charge, studies show public defense counsel file fewer motions on behalf of their clients. "You don't need the judge to say explicitly 'don't file any motions,' " says David Carroll, director of research and evaluation at the National Legal Aid & Defender Association. "The public defender just knows

not to file motions to dismiss or motions to exclude evidence in order to keep the cases moving." Too often, Carroll says, appointed counsel want to keep the judge happy rather than the client in order to get more assignments.

LaBahn of the American Prosecutors Research Institute says fewer motions are not necessarily a bad thing. When defense attorneys are familiar with a judge, maybe even practicing exclusively in his or her courtroom, the defender "is able

to do what is in the best interest of his client," says LaBahn, "and there are going to be many fewer frivolous motions."

In some states, such as North Carolina, judges not only appoint private counsel to individual cases but also appoint county public defenders to office. A recent state auditor's report on indigent defense in North Carolina called the practice a serious problem. "Since it is reasonable to assume that each public defender has an interest in being reappointed to the next four-year term and would like to remain in the judge's favor during the interim, neither the public defender [nor] his or her staff . . . can be considered free from judicial influence," the auditor wrote.²⁸ The audit noted that there is, therefore, a conflict between attorneys' financial interest and their responsibility to provide a vigorous defense.

To counteract inappropriate judicial influence, the ABA recommends that either local or state independent commissions oversee indigent defense, appointing lawyers, setting fees and establishing standards. But in Louisiana, before the state reformed its indigent-defense system in 2007, local judges selected members to the county oversight commissions. In one parish, the District Court judiciary appointed the high-school vice principal, a nightclub owner and a part-time embalmer, none of whom had experience in indigent defense.²⁹ In another parish, the local commission was chaired by a lawyer for the local police association.³⁰

This past January, the Nevada Supreme Court took the kind of action usually left to the legislative branch — in an unprecedented decision it ordered each county to devise a plan to remove judges from the selection of attorneys.

Sometimes it is not the judicial branch that has undue influence but the executive. In New Mexico, the governor appoints the state public defender and all district-level managers. When Gov. Bill Richardson, D-N.M., first took office in January 2003, he cleaned house, as a

new administration often does, removing all the previous public defenders. But according to the state's leading newspaper, Richardson's replacement for state public defender was a private lawyer with little management experience who had contributed heavily to the governor's election campaign. Richardson's spokesperson at the time denied that campaign contributions played a role in any of the governor's appointments.³¹

Earlier this year, both chambers of the New Mexico legislature passed a bill that would have created an independent state commission to appoint public defenders and oversee indigent defense services, but Richardson vetoed it, saying the commission would have created "an unnecessary and unaccountable layer of bureaucracy [that] encroaches on the rightful authority of the executive."³²

Alaska, Delaware, Iowa, New Jersey, Rhode Island, Vermont, West Virginia and Wyoming also have state public defenders who are direct political appointees.

Should states rather than counties fund and supervise indigent-defense services?

Problems of excessive caseloads, judicial interference, insufficient training and poor supervision are most common in county-run indigent defense systems, according to researchers. Indeed, they say most countywide systems fail to meet any of the ABA's standard. On top of and contributing to those problems, county budgets for indigent defense can be quite volatile.

For example, rural Quitman County, Miss., had not had a murder in 10 years. But when a murder did occur, the cost of providing two separate lawyers to the two defendants in a complex case almost bankrupted the county, which faced the prospect of cutting back funding on core services like schools. So in 2001 the county sued the state, saying it lacked the funds to provide an effective defense. The county lost, but the case illustrates "how erratic a burden public defense can be for counties," says

Brink of the National Association of Criminal Defense Lawyers.

State funding of indigent defense is far more stable, says the National Legal Aid & Defender Association's Carroll, because it's easier for one state public defender to make his case to the legislature than for hundreds of public defenders to ask each county for money. As of July 2006, 28 states fully funded indigent defense services, and another three provided the majority of funding. The rest relied heavily on county funding, with two states, Pennsylvania and Utah, providing no state funding at all.³³ (*See map, p. 340.*)

But state funding is not a panacea; independent, authoritative oversight commissions are also needed, say reformers. Forty-two states have some sort of statewide body, many of which have been around for decades, but some are controlled by the executive branch, others provide only partial oversight, some have no real power to enforce their standards and some lack sufficient funds.

In North Dakota, for example, although the state pays for indigent defense and a state commission has existed since 1981, "the system was seriously underfunded and lacked independence, uniformity and effective oversight," according to a recent study. The system relied mostly on private lawyers under contract with judges and required they handle an unlimited number of cases for a flat fee. "The contracts created problems of independence and case overload . . . and had a deleterious effect on quality," noted the study.³⁴ The state commission had no real oversight authority. But that changed in 2005, when the North Dakota legislature ordered an overhaul, creating a state commission with real authority to set standards and to establish public defender offices across the state.

In the past decade, several other states have also strengthened state control of indigent defense, including Connecticut, North Carolina, Oregon, Virginia, Montana and Georgia. Some, like Montana

and Connecticut, did so in response to lawsuits filed by the American Civil Liberties Union (ACLU); others did so after a state task force showcased the failure of their indigent defense systems to meet few, if any, of the ABA's *10 Principles*.

Do any states comply with all 10? "That's hard to know," says Brink, "because we don't do annual evaluations in all 50 states." But several come close, she says, including Maryland, Connecticut, New Jersey, Montana, Minnesota, Massachusetts and Wisconsin.

"This doesn't mean you can't have a great county-based system," says Carroll. "In fact, some of the best systems, like San Francisco and Los Angeles, are county systems, but you can look across the border [into other counties] and see a bad system." In that sense, Carroll says, state control is always better.

But Judge, the public defender of Los Angeles County, strongly disagrees. In California, at least, "a state system would not be an improvement," says Judge. "In fact, I believe it would clearly degrade the quality of representation provided to indigent criminal defendants."

Judge says he and other public defenders from well-financed counties are indeed concerned about the quality of indigent defense in smaller counties that rely on low-bid contracts with private attorneys. But converting to a state system, he says, is not the solution, judging by what the state pays its prosecutors. "If the state doesn't pay the attorneys general in California a competitive salary," Judge asks, "then what would make you think that the state would be willing to pay the public defenders a competitive salary?" It just wouldn't happen, he says, and instead, a state takeover to fix the problems of poorer counties would end up weakening indigent defense in the wealthier ones as public defenders leave for better-paying jobs in private industry.

Still, more states are under pressure to abandon their county-based systems. In Michigan, the ACLU has filed a law-

suit; in Nevada, the state Supreme Court has recommended state control and in New York state, Chief Judge Judith Kaye and a host of local bar associations and public defenders have asked the legislature for a complete overhaul of New York's fragmented county system of public defense.

"Isn't it time we had a truly effective system of indigent defense in the state of New York?" Kaye asked last year as she addressed a conference of public defenders, judges, prosecutors and lawmakers. "It surely makes a lot of sense to me." ³⁵ ■

BACKGROUND

Limited Rights

While the right to government-appointed counsel for indigent defendants is relatively new, most Americans might assume that they have always had the right to at least hire a lawyer if charged with a crime. But they would be wrong.

In the earliest years of colonial America, the criminal courts resembled those in Britain. Trials were prosecuted by crime victims or their surrogates; judges could deny defendants the right to counsel, and most defendants represented themselves. According to James Tomkovicz, a criminal-law scholar at the University of Iowa, there were two reasons for self-representation: Well-trained lawyers were uncommon, and the colonists had "an abiding distrust for lawyers and had little respect for the legal profession." ³⁶

But in the early 1700s, criminal proceedings began to change. The colonists adopted the continental European institution of a government-funded public prosecutor to pursue criminal charges. In addition, the number of trained lawyers increased, and the public's respect for the legal profession grew "as

the colonists came to recognize the critical roles that counsel could play in protecting individual rights and liberties against the oppressive or overreaching government authorities." ³⁷ As a result, colonies began to expand criminal defendants' right to counsel.

Nevertheless, "no uniform practice existed throughout the colonies at any time before . . . the Revolution," wrote constitutional law scholar William Beaney. ³⁸ Several colonies continued to follow the practices of English common law, while Pennsylvania, Delaware, South Carolina, Connecticut, Virginia and Rhode Island, either in their charters or by statute and to varying degrees, explicitly recognized the right to counsel.

Beginning in 1776 after the Declaration of Independence, seven of the new states — Delaware, Pennsylvania, New Jersey, Maryland, Massachusetts, New Hampshire and New York — adopted constitutions that guaranteed criminal defendants a right to counsel. Some states, including Pennsylvania and Delaware, went further and passed statutes requiring the government to appoint lawyers to criminal defendants accused of capital crimes — those punishable by death. However, only two states — New Jersey, by statute, and Connecticut, by custom — appointed counsel to all criminal defendants who could not afford to hire a lawyer. "Excluding these two states, the right to counsel meant the right to retain counsel of one's own choice and at one's own expense," according to Beaney. ³⁹

The Bill of Rights

In spring 1787, the Framers of the Constitution met in Philadelphia, but the right to counsel was not included in a single proposed draft. One reason for the omission may have been the Framers' anticipation that "state criminal justice systems would handle the bulk of criminal prosecutions." ⁴⁰

Continued on p. 349

Chronology

1700s-1800s

Two amendments to the Constitution lay the groundwork for expansion of indigent defendants' right to counsel.

1791

States ratify Bill of Rights; Sixth Amendment guarantees defendants the right to hire counsel in federal courts.

1868

The 14th Amendment guarantees "due process."

1930s-1940s

Supreme Court expands the right to government-appointed counsel in state and federal courts.

1932

Supreme Court recognizes in *Powell v. Alabama* that indigent defendants in state prosecutions of a capital crime have the right to government-appointed counsel.

1938

Supreme Court extends a poor defendant's right to counsel in federal courts in *Johnson v. Zerbst*.

1942

Supreme Court rules in *Betts v. Brody* that a poor person prosecuted for a felony in state court does not necessarily have the right to appointed counsel; the court recommends a case-by-case approach.

1960s-1970s

Supreme Court decisions broadly expand the right to counsel.

1963

In the landmark *Gideon v. Wainwright* decision the Supreme Court overrules itself and recognizes the right to public defense in state prosecutions of felonies.

1966-67

Supreme Court recognizes a low-income defendant's right to counsel at post-arrest interrogation in *Miranda v. Arizona* and during lineups in *United States v. Wade*.

1967

Supreme Court extends *Gideon* decision to indigent children charged in juvenile-delinquency proceedings in *In re Gault*.

1970

Supreme Court recognizes a low-income defendant's right to counsel during preliminary hearings in *Coleman v. Alabama* and during plea negotiations in *Brady v. United States*.

1972

Court's *Argersinger v. Hamlin* decision extends the right to counsel to indigent defendants in state prosecutions of misdemeanors where there is the potential for a loss of liberty.

1973

National Advisory Commission on Criminal Justice Standards and Goals creates standards governing indigent defense services.

1974

U.S. Justice Department's National Study Commission on Defense Services issues guidelines.

1980s-Present

States and American Bar Association (ABA) find many indigent-defense systems in crisis. New

streamlined standards along with lawsuits prompt some reforms.

1982

ABA's first public hearings on indigent defense finds many public defense lawyers underpaid, overworked and poorly trained.

1984

Supreme Court's *Strickland v. Washington* ruling says defendants are entitled to counsel's effective assistance.

1992

ABA issues third edition of *Standards for Criminal Justice on Providing Defense Service*.

2001

Oregon establishes state-based Public Defense Services Commission, moving away from a county system.

2002

ABA issues *Ten Principles of a Public Defense Delivery System*, a condensed version of its standards.

2003

On the 40th anniversary of *Gideon*, ABA holds another series of public hearings and issues report concluding not much has changed in 20 years.

2004-2005

American Civil Liberties Union alleges systemic right-to-counsel violations in Montana. A year later, state overhauls public defender system.

2007

After Hurricane Katrina, Louisiana reforms indigent defense, adopting a statewide system.

2008

Nevada Supreme Court orders counties to remove judges from the selection of indigent defense attorneys, to protect the independence of defense lawyers.

Crisis Seen in Juvenile Defense

CQ Researcher *author Barbara Mantel talks with Mary Ann Scali, deputy director of the National Juvenile Defender Center, which provides support to public defenders, appointed counsel, law school clinical programs and nonprofit law centers.*

CQ: In the past year-and-a-half, your organization has assessed juvenile public defense in Mississippi, Illinois, Florida and Indiana, and many other states before that. How would you characterize public defense systems for juveniles in this country?

Scali: It is a right that is not adequately afforded, protected or upheld in this country. The majority of states don't have statewide public defender systems; they are county based. So what you see is justice by geography. Where there are significant resources and commitment, you'll see defenders with specialized training and adequate support. In jurisdictions where juvenile justice is viewed as a stepchild, you'll see attorneys rotating through the juvenile division and youths not really having a voice in the system.

CQ: A common thread in many of your organization's state assessments is excessive waivers of counsel.

Scali: Youth are mirandized, but even so, very frequently they will waive their *[Miranda]* right to counsel and to remain silent because they are told this is what we need from you so you can go home. And many times they simply want to go home.

CQ: How serious a problem is it?

Scali: We have jurisdictions where 80 percent of youths waived counsel. There are some jurisdictions where waiver is not allowed without consultation with counsel, but there are many that allow it.

CQ: When youths do get counsel, how well-trained are these lawyers?

Scali: Juvenile attorneys need to have additional skills. They need to know juvenile development, they need to understand adolescent thinking, they need to know about effective programs and treatments. Most programs don't give this kind of training.

CQ: Another problem in many states, according to your reports, is that lawyers are not assigned early enough in the process.

Scali: Typically, attorneys are appointed at the first court appearance, after the youth has been arrested and has met with intake officers and with police officers.

CQ: Why is that too late?

Scali: When you think of children and their development and their experience with authority figures, youth are far more subject to coercion than adults. Oftentimes youths are most concerned with what is immediately coming next. What they often do is tell a story or comply with whatever the police officer is asking them to do so they can simply go home.

CQ: Almost all of the state assessments talk about juvenile defenders' enormous caseloads and the large amount of plea bargaining that results.

Scali: Plea bargaining is everybody's attempt to move the system along. It's all about dockets and the system being overwhelmed. Plea bargaining prevents the child from having his day in court.

CQ: You also say that defenders are often confused about their role, thinking that they have to act as a parent would.

Scali: One typical example is a defender who sees a child who needs services for mental health or addiction and thinks we're just here to help and the only way to help is to plea bargain and get this child hooked up with services. Instead, that attorney should be working with the child on his defense, explaining his constitutional rights and helping to advocate for those rights in the courtroom.

CQ: What's wrong with getting a child services that he needs?

Scali: If my child needs substance-abuse services, there are 10 other agencies that can provide it. The justice system is not the place to get those services. Pleading guilty is not the way to get services.

CQ: You say defenders often don't think about the longer-term collateral consequences of a plea, like loss or delay in getting a driver's license, inability to join the military or to qualify for student loans and public housing.

Scali: That's right. Our juvenile-justice system is not a benign, benevolent system. But it's not all doom and gloom. These problems are not intractable. There are a number of great ideas and tremendous progress in some parts of the country, like Philadelphia, Boston and Louisiana.



Juveniles' legal rights are not fully protected, according to the National Juvenile Defender Center. Eric Hainstock, above, was charged last year with shooting his principal in Baraboo, Wis.

AP Photo/Wisconsin State Journal/Craig Schreiner

Continued from p. 346

But many delegates to the Constitutional Convention were disturbed that the proposed document failed to include a declaration of rights. Eventually it became clear that many states would not ratify the Constitution without the promise of one. With that promise in hand, the 13 states ratified the Constitution by mid-1790 and the next year ratified the Bill of Rights, composed of 10 amendments. The Sixth Amendment spells out the rights of the accused in criminal prosecutions and includes a clause promising “the assistance of counsel for his defense.”

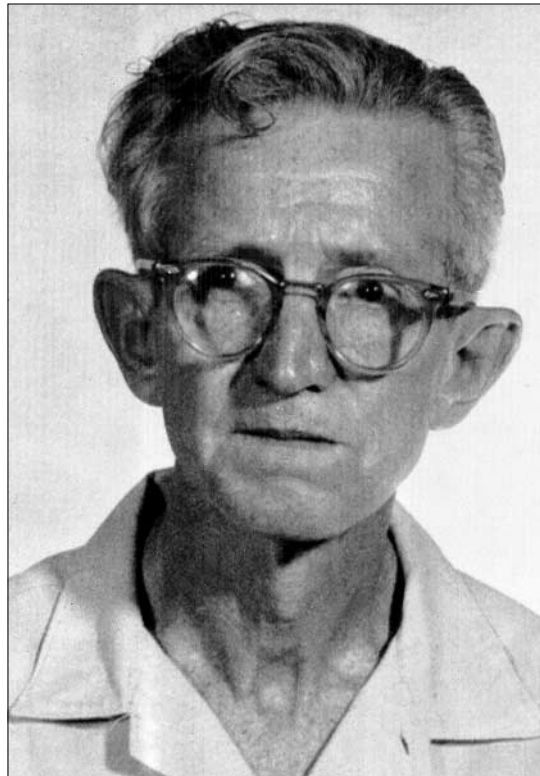
“It is extremely difficult, if not impossible . . . to reach any positive conclusion concerning the intention of Congress in proposing the clause or the interpretations given it by the states at the time of ratification,” wrote legal scholar Beane. ⁴¹

While there was considerable contemporary debate about the other rights contained in the 10 amendments, there is little record of discussion of the right to counsel.

Nevertheless, U.S. courts later concluded the Framers meant to provide criminal defendants with the right to retain a lawyer but not a right to government-appointed assistance and that, in addition, the Sixth Amendment applied only to criminal cases in federal court. Since the vast majority of criminal cases are brought in state court, the Sixth Amendment initially had little practical significance.

The 14th Amendment

Adopted in 1868, the 14th Amendment includes the clause “nor shall any state deprive any person of life, liberty, or property, without due process of law.” Nearly 64 years later,



Getty Images/Alex Wong

Clarence Earl Gideon was serving a five-year sentence in a Florida prison for breaking and entering. Writing in pencil, he asked the Supreme Court for a new trial because he had not been given a lawyer, as guaranteed under the 14th Amendment. The court ruled unanimously in 1963 that an indigent person accused of a serious crime has the right to court-appointed counsel. At his new trial, Gideon was found innocent.

the Supreme Court, in its first significant right-to-counsel opinion, would cite this amendment to extend the right to counsel to state courts.

That watershed opinion was issued in *Powell v. Alabama*, in which nine young black men in Alabama were accused of raping two white women, an offense punishable by death. The indigent and illiterate defendants could not afford to hire counsel, and the judge, on the morning of the trial, appointed two defense attorneys with little trial experience. The trials took one day, and all defendants but one — a 13-year-old who was sentenced to life imprisonment — received death sentences.

The highly publicized case attracted the attention of a prominent civil rights

lawyer, Walter Pollak, from New York City, who argued before the U.S. Supreme Court that the defendants had not received competent counsel. The high court agreed, stating that the 14th Amendment's guarantee of due process had been violated. “The right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel,” the majority opinion explained. ⁴² Without counsel, though a defendant “be not guilty, he faces the danger of conviction because he does not know how to establish his innocence.” Thus the court in 1932 recognized that defendants in state prosecutions had the right to retain a lawyer and the right to have the government provide a lawyer if the defendant could not afford to hire one.

Six years later, the right to counsel for poor defendants was extended to federal court proceedings. In 1938 in *Johnson v. Zerbst*, the Supreme Court ruled that the Sixth Amendment provided not only the right of criminal defendants in federal court to retain counsel but also the right of indigent defendants to receive appointed counsel. ⁴³

Gideon v. Wainwright

While the *Johnson v. Zerbst* decision applied to all criminal cases in federal court, the *Powell v. Alabama* decision was interpreted narrowly to extend the right to appointed counsel only in state prosecutions of capital cases. The Supreme Court revisited the issue 10 years later in *Betts v. Brody*. An indigent Maryland man charged with robbery requested a court-appointed lawyer but was denied. He later contended that he was denied due process, but the lower courts and the Supreme Court ruled that he had adequately defended himself. As Drew University law Professor Paul Wice wrote in his book

Constitution Provides Counsel and Due Process

The Sixth Amendment to the U.S. Constitution establishes the right to counsel in federal criminal prosecution. The 14th Amendment, adopted in 1868, includes the clause “nor shall any state deprive any person of life, liberty, or property, without due process of law.” Nearly 64 years later, the Supreme Court, in its first significant right-to-counsel opinion, cited this amendment to extend the right to counsel to state courts.

Amendment VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

Amendment XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Public Defenders and the American Justice System, the majority opinion explained that “the Sixth Amendment’s right-to-counsel provisions applied only to federal criminal cases, while the 14th Amendment did not require the state to appoint an attorney in every criminal case where the defendant was impoverished and could not afford an attorney.”⁴⁴ The court recommended a case-by-case approach.

But in 1963 the U.S. Supreme court overruled itself in *Gideon v. Wainwright*, the most significant right-to-counsel decision in the court’s history. Clarence Earl Gideon, a poor, middle-aged white man, had written the Supreme Court from his cell in a Florida state prison. As then-*New York Times* reporter and columnist Anthony Lewis described in his compelling bestseller, *Gideon’s Trumpet*, Gideon had written in pencil. His papers “were done in carefully formed printing, like a schoolboy’s, on lined sheets evidently provided by the Florida prison.”⁴⁵ Charged with a felony, breaking and entering with the intent to commit a misdemeanor, he had been denied appointed counsel at his trial and was serving a five-year sentence.

Arguing that he had been denied the due process guaranteed by the 14th Amendment and never mentioning the *Betts* case, Gideon petitioned the Supreme Court to hear his appeal. It agreed, and in a unanimous decision the court held that an indigent person accused of a serious crime has the right to court-appointed counsel at state expense. In its key reasoning, the court said, “That government hires lawyers to prosecute and defendants who have the money hire lawyers to defend are the strongest indications of the widespread belief that lawyers in criminal courts are necessities, not luxuries.”⁴⁶

Four years later, with its decision in *In re Gault*, the Supreme Court extended the *Gideon* decision to indigent children charged in juvenile delinquency proceedings.⁴⁷ Still, an adult indigent defendant’s right to appointed counsel in a state criminal proceeding was limited to capital cases and felonies. That changed in 1972. In its decision in *Argersinger v. Hamlin*, the court extended the right to counsel to indigent defendants in all misdemeanor state proceedings where there is the potential for a loss of liberty.

While *Gideon*, *Gault* and *Argersinger* are the best-known right-to-counsel cases in Supreme Court history, “they were part of a broader array of decisions by the court in the past three decades, all of which protect the right to counsel for people who cannot afford to hire a private lawyer,” according to the National Legal Aid & Defender Association.⁴⁸ In more than half a dozen cases, the Supreme Court has recognized an indigent defendant’s right to counsel during critical stages of a criminal proceeding, including post-arrest interrogation, lineups and other identification procedures, preliminary hearings, arraignments and plea negotiations.⁴⁹ And in 1984, the court ruled that in any criminal proceeding in which counsel appears, the defendant is entitled to effective assistance, although many critics have argued that the court made it extremely difficult for defendants to prove ineffective counsel.

Gideon’s Broken Promise

The result of the Supreme Court’s decisions, from *Powell* through

Argersinger and beyond, meant that states and localities would have to assume the enormous cost of providing counsel to the poor. The court never ruled exactly how indigent defense should be funded and administered, and a variety of approaches have been developed. More than half the states fully fund and administer indigent defense; in others the full responsibility rests with county governments; in still others it is a combination of the two. As a result, the quantity and the quality of indigent defense services vary enormously from state to state and locality to locality.

"The first significant efforts to systematize and standardize the provision of indigent defense services occurred in the early 1970s," according to the National Legal Aid & Defender Association.⁵⁰ In 1973, the National Advisory Commission on Criminal Justice Standards and Goals issued a basic set of standards for indigent defense systems. Building on these basic standards, the National Study Commission on Defense Services issued a more detailed set of voluntary standards three years later. It addressed critical concerns such as how to determine who is indigent, when counsel should be provided, how public defender systems should be structured, how public defense services should be funded, how much public defenders should be paid, what caseload level is acceptable and how lawyers should be trained.

Yet 20 years after *Gideon*, many public defense systems across the country were considered inadequate and plagued by problems. In 1982, the American Bar Association held its first public hearing on the subject. One witness, the author of a recent report entitled "Criminal Defense Services for the Poor," offered the following assessment of indigent defense in the United States: "The major finding of the study was not surprising to anyone who knows the criminal-justice system: Financing of defense services for indigents is inadequate." As a result, he said, "public defenders have too many cases; lack adequate investigator, clerical, and para-

The Public Defender Network

Public defenders serve indigent defendants in any of three basic arrangements: as employees of public or private organizations or the government; as appointees from lists of private bar members, or as individual attorneys or firms or nonprofits that work under contract.

Public defender

A salaried staff of full-time or part-time attorneys that render criminal indigent defense services through a public or private nonprofit organization, or as direct government-paid employees.

Assigned counsel

The appointment from a list of private bar members who accept cases on a judge-by-judge, court-by-court or case-by-case basis. This may include an administrative component and a set of rules and guidelines governing the appointment and processing of cases handled by the private bar members.

Contract

Non-salaried individual private attorneys, bar associations, law firms, consortiums or groups of attorneys or nonprofit corporations that contract with a funding source to provide court-appointed representation in a jurisdiction. This does not include public defender programs primarily funded by an awarded contract.

Source: "Indigent Defense Services in Large Counties, 1999," Bureau of Justice Statistics, November 2000

legal support, and are often inadequately trained for their assigned tasks."⁵¹

Formal assessments of state systems continued over the years, often pointing to the same flaws. In response, the ABA in 2002 issued its *Ten Principles of a Public Defense Delivery System*, created as a practical guide for "government officials, policy makers, and other parties who are charged with creating or funding new, or improving existing public defense delivery systems."⁵² Drawing on the ABA's more detailed effort to standardize public defense services in 1992, the *Ten Principles*, addressing issues such as caseloads, training, supervision and independence of public defenders, is often used by critics as the yardstick by which to judge public defender systems across the country.

In 2003, on the 40th anniversary of

Gideon, the ABA held another series of public hearings and issued its verdict in "Gideon's Broken Promise." Comparing the current quality of indigent defense services to 20 years earlier, the authors summarized the report's findings with a bleak assessment: "Not much has changed." ■

CURRENT SITUATION

Who Is Indigent?

One defendant makes just \$9 an hour but owns a car worth \$9,000.

Death Penalty Cases Strain Local Budgets

Some defendants are left without attorneys.

Death sentences in the United States are on the decline, but their costs continue to rise. Just 110 people were sentenced to death in 2007, down from a peak of 326 in 1995.¹ Analysts may argue about the causes for the decline — some point to DNA testing and its spotlight on wrongful convictions; others credit a drop in crime — but one thing is certain: When brought, capital cases can create havoc with a public defense system and its budget.

Death penalty cases can be far costlier to defend than other kinds of cases if attorneys follow the American Bar Association's standards, which call for a defense team consisting of two attorneys experienced in capital defense, an investigator, a mitigation specialist (to present "mitigating" reasons why the death penalty should not be imposed) and perhaps a jury-selection expert. One member of the team must be qualified to screen defendants for mental or psychological disorders or impairments.²

"It is not as if a defense attorney can just take the police report as the final word on the investigation," says David Carroll, director of research and evaluation at the National Legal Aid & Defender Association. "They need to conduct their own thorough investigation from top to bottom," he says, from interviewing eyewitness to examining forensic evidence that increasingly includes DNA.

Capital cases can be particularly hard on counties that are expected to fund the majority of indigent defense services. "It only takes one extraordinary case" — or a jump in the number of capital cases brought — "to double their budget and put them into fiscal jeopardy," says Carroll.

In Maricopa County, Ariz., which includes Phoenix, the number of capital cases has nearly doubled since Andrew Thomas was elected county attorney in 2005 on a law-and-order platform, even though the number of first-degree murder cases had remained stable for a decade. Thomas said he is simply trying to return the percentage of capital cases to mid-1990s levels.³

But the change in policy has drained the county's public defense system of money, leaving several defendants without representation and causing several lawyers who defend capital cases to ask the courts to stay capital cases where no lawyers are available. "Clearly, the system is overwhelmed," said James Haas, the county public defender.⁴

But even where a state funds capital cases, problems can arise. Last October, the New Mexico Supreme Court halted the prosecution of two prison inmates charged in the murder of a guard until "the state makes adequate funds available for the defense." Noting that death penalty cases are more difficult to defend than other murder cases, the court ordered the state's Public Defender Department to seek additional funding from the legislature. But the legislature took no action, and in early April state District Judge Neil Candelaria said the two inmates would not face the death penalty.

Other states are grappling with the same issues. In Georgia, the capital case against Brian Nichols, who allegedly shot and killed a judge, a court reporter, a sheriff's deputy and a U.S. customs agent, has cost nearly \$2 million so far and drained money from other capital cases. Judges have had to delay at least a dozen other death penalty trials because assigned defense lawyers couldn't be paid.

Critics blame the escalating cost of Nichols' defense on the fees of his assigned private lawyers and the judge who authorized the payments, while the defense team blames prosecutors who placed five lawyers on the case and insisted on requesting the death penalty. The entire ordeal has caused a furor in Georgia, which had overhauled its indigent defense system in 2003, replacing a patchwork of county systems with statewide oversight and increased state funding.

Now, in part because of the Nichols case, the legislature is backpedaling. It recently passed a bill that requires counties to share more of the financial burden of death penalty cases and restricts capital trials to the courtrooms of elected judges. The original judge on the Nichols' case was a senior, appointed judge. "I believe very firmly in an elected judiciary," says Republican state Sen. John Wiles. "Elected judges who are accountable to the public are an essential component of controlling costs."

¹ Death Penalty Information Center, www.deathpenaltyinfo.org/article.php?scid=9&did=873.

² See "Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases," American Bar Association, 2004 edition.

³ Jennifer Steinhauer, "Policy Shift on Death Penalty Overwhelms Arizona Court," *The New York Times*, March 5, 2007, p. 15A.

⁴ *Ibid.*

Another earns twice that much but owns no assets. Which one, if either, deserves to be assigned a public defender?

The U.S. Supreme Court, in establishing the right to counsel, has never directly addressed who is indigent. That decision is left to the counties and the states, and their only guidance comes from the National Study

Commission on Defense Services, which has said: "effective representation should be provided to anyone who is unable, without substantial financial hardship to himself or his dependents, to obtain such representation." It's no surprise, then, that eligibility requirements for public defense vary across jurisdictions.

Most states assume that anyone receiving public assistance, food stamps or Medicaid Disability Insurance or living in public housing is eligible for a government-provided defense lawyer. After that, most states use the federal poverty guidelines as a threshold. Typically, if defendants' available income is

Continued on p. 354

At Issue:

Should poor defendants have the right to counsel in civil cases?



WILLIAM H. NEUKOM
PRESIDENT, AMERICAN BAR ASSOCIATION

WRITTEN FOR *CQ RESEARCHER*, APRIL 2008

every day, in communities across America, people are being evicted from homes, losing custody of their children and being denied life-or-death health benefits.

In many cases, the life impact may be just as shattering as a jail sentence. But whereas legal counsel is guaranteed to indigent criminal defendants in serious matters, there is no parallel universal right in civil cases.

In August 2006, the American Bar Association House of Delegates declared that it is time for a guaranteed right to legal representation in civil cases where basic human needs are at stake. The ABA specifically cited cases involving shelter, sustenance, safety, health and child custody.

Civil-justice studies confirm that our two main methods of representing the poor — free (pro bono) assistance by private lawyers and legal-aid offices funded through the Legal Services Corp. (LSC) — have fallen far short. Despite these heroic efforts, 80 percent of the civil legal needs of poor people go unmet every year, and LSC-funded programs turn away half of all people seeking assistance, due to insufficient funds.

Courts in several states, and at the federal level, have narrowly rejected arguments for a constitutional right to counsel in civil matters. Advocates continue to assert such a right in some state constitutions, and legislatures also can enact a right to counsel through statute. Indeed, there are limited examples in which states guarantee representation in civil cases.

For instance, virtually every state guarantees an appointed attorney or guardian for children in abuse and neglect cases. Counsel also is provided more sporadically in cases involving child custody and visitation; involuntary confinement or quarantine; and release of mental health records.

In each case, states have decided that it is in the public interest, and in the interest of justice, to provide free counsel to the indigent. This is true in other serious civil cases, as well.

When poor people are evicted unjustly, government spends far more to shelter, feed and clothe them than it would to provide a lawyer to stop the eviction. When indigent mothers wrongly lose health benefits, because they lack counsel, unattended health needs often become more serious and costly over time.

Of course, beyond the dollar costs and benefits to taxpayers, there is the simple question of doing what is right for less fortunate Americans.

Etched on the U.S. Supreme Court building is one of America's most inspiring visions: "Equal Justice for All." Only by providing counsel in civil matters when people's health and well-being are at stake can our nation make that vision a reality.



ANDREW GROSSMAN
SENIOR LEGAL POLICY ANALYST
THE HERITAGE FOUNDATION

WRITTEN FOR *CQ RESEARCHER*, APRIL 2008

in a nation where about one in every 100 workers is a lawyer — where lawyers tout low, flat rates in the phone-book and no-risk contingency fees on late-night TV — only the lawyers' trade association could argue the government needs to provide free legal representation in civil cases.

Specifically, the American Bar Association (ABA) proposes a new "right" to legal representation in all lawsuits affecting a broad array of "basic human needs."

The dangers of this proposal are obvious. The chief risk is that it will encourage unnecessary litigation. Unlike mediation and other means of dispute resolution, litigation is expensive, slow, stressful and adversarial. It can tear apart families and ruin good relationships. Reducing litigation is a better goal than subsidizing it.

A right to counsel also would increase frivolous claims. Today, indigents' worthy claims are handled by lawyers who either volunteer their services or, believing a case has financial merit, work on a contingency basis. A right to counsel, however, would encourage unscrupulous lawyers to bring bad cases to generate government fees. And if the government is paying, our litigious society would bring even more claims, hoping to get lucky or at least strike a quick settlement.

Automatic government funding for lawyers would deter practitioners from providing free services to the indigent. Indeed, funding for legal-services organizations already may have had this effect. And it seems unlikely that lawyers eager to take cases on a government pay scale will be more skilled or experienced than the practitioners who volunteer today.

At bottom, the need for a right to counsel in civil suits is questionable. Most lawyers already volunteer their services, and specialty legal clinics are prevalent. Most important, increased competition (due to reforms the ABA largely opposed) has made legal services less expensive in recent years.

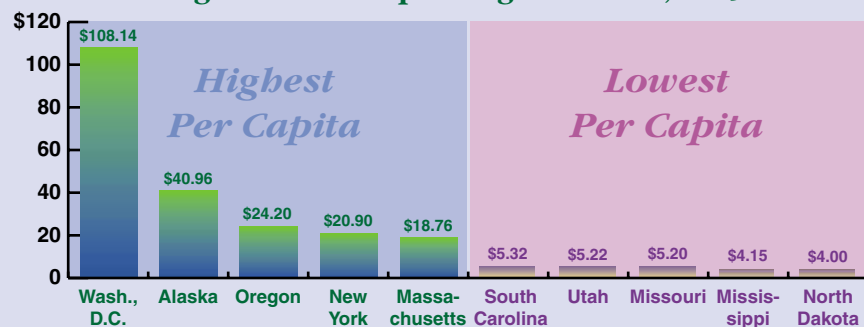
We need more modest, less risky policies to improve Americans' access to counsel. The key is more competition. This means lowering bars to practice, reducing the cost of legal education, allowing non-lawyers to handle more matters and expanding the ability of lawyers to offer informal advice over the Internet. If less regulation is appropriate for car mechanics — members of a profession more important to Americans' safety — then it should be good enough for lawyers.

If the ABA truly believes that Americans lack access to counsel, it should do more to persuade its members to volunteer their services. But it is perhaps reflective of the bar's hubris that it instead wishes to create a "right," financed by taxpayers, to the services that only it provides.

Indigent Defense Spending Varies Widely

Spending for indigent defendants varied in 2005 from a low of \$4 per capita in North Dakota to a high of \$108 in Washington, D.C.

Indigent Defense Spending in the U.S., 2005



Source: The Spangenberg Group

Continued from p. 352

at or below 125 percent of those guidelines, they would qualify for public counsel. Some states are more generous; Utah's threshold is 150 percent and Florida's is 250 percent. But others, facing budget constraints, have become less generous. In early April for instance, Georgia passed a law lowering its eligibility threshold for those charged with misdemeanors from 125 percent to 100 percent of the federal poverty guidelines (The guideline for a family of four is \$20,650.).

The reason for the change, according to Republican state Sen. John Wiles, one of the bill's sponsors, is "money; pure and simple. We have a budget crisis." The state kept the threshold for felonies at 150 percent in an effort to concentrate limited resources "where there is the most compelling need," according to Wiles. He says he expects no adverse impact from the change. "I think someone at 100 percent or more of the poverty guideline is poor, not indigent."

But criminal-justice researcher Spangenberg calls the Georgia provision "madness." And Stephen Bright, president of the Southern Center for Human Rights, predicted the change in eligibility will create havoc in Georgia's courts. "People living on a bare subsistence income will not be able to hire

private attorneys," said Bright, "and as long as they are unrepresented, the courts will not be able to try their cases or accept their guilty pleas."⁵³

In another effort to reduce caseloads and cut costs, some jurisdictions are putting in sliding scales. In Dakota County, Minn., "some judges appointed the public defender to just about anyone who asked for it," says Steven Holmgren, chief public defender of the state's First Judicial District, "and others were, I thought, overly strict." To fix the problem, screeners now enter the jails every morning and interview those who want to apply for a public defender. Those at the very low end of the income range may qualify for a public defender for all types of crimes, while those at the higher end may qualify for a public defender only if they're accused of a felony. The underlying premise is that private lawyers charge a lot more for more serious crimes.

Spangenberg calls such a tiered approach fair, but Dakota County is doing something else that is increasingly common and subject to sharp debate. It's charging anyone who earns more than \$8/hour and who qualifies for a public defender a fee, ranging from \$100 up to \$400, depending on income. In the past decade, at least a dozen states have

adopted fees, ranging from \$25 in North Dakota to up to \$200 in New Jersey.⁵⁴

Opponents say application fees have a chilling effect on the right to counsel, while proponents say a judge can always waive a fee if necessary. Still, Spangenberg says he's heard stories of people being denied a lawyer because they couldn't pay the fee. "In many places, people wouldn't be told that if they can't afford the screening fee they would still get a lawyer," he says.

Collateral Consequences

Eighteen-year-old "Nicholas" — not his real name — was arrested a few years ago in New York City and charged with possession of a marijuana cigarette, the equivalent, in Manhattan, of a traffic violation. Nevertheless, the college freshman stood to lose his student loans because federal law prohibits a student convicted of any drug offense from receiving federal grants, loans or work-study assistance for one year or more.

The civil penalties that often accompany a conviction or a guilty plea are known as collateral consequences. And there are more of them today, as state and federal lawmakers have gotten tougher on crime. Since 1996, anyone convicted of possessing, using or distributing drugs is barred for life from receiving welfare and food stamps. In New York state, a plea to disorderly conduct, a non-criminal offense, bars a person from public housing for three years; two convictions for subway turnstile jumping make a green-card holder deportable.

"It can literally rip families apart," says McGregor Smyth, managing attorney of the Civil Action Project at Bronx Defenders, a public defender agency in New York City.

Yet no state requires public defenders to inform their clients of the collateral consequences that could accompany a guilty plea or a conviction, although there are ethical guidelines that say lawyers must. But with unmanageable caseloads,

many public defendants just don't have the time. Nor do they have the training. Besides, says Jennifer Riggs, a senior associate at The Spangenberg Group, there are no handbooks where you can look up what your client is being charged with, such as theft, and see what collateral consequences apply.

Smyth says the civil penalties are often worse than the original jail term or fine and often prevent people from getting their lives back on track. "If you don't have a place to live, it's pretty hard to get a steady job," Smyth says. "If you don't have a steady job, it's hard to find a place to live, and if you don't have any of that, it's pretty hard to pull yourself out of the cycle of crime."

Smyth's office was created specifically to break that cycle by lessening the collateral consequences of crime. For 18-year-old "Nicholas," Smyth persuaded the district attorney on the case to change the charge, and he was able to remain in college.

Time, training and money are needed so more public defenders can help their clients consider the collateral consequences when negotiating a plea, Smyth says. But all are in short supply.

Holistic Defense

A shortage of money is also threatening another novel approach to indigent defense — holistic defense — in which social workers help defense lawyers evaluate clients with mental-health or substance-abuse problems and seek alternatives to jail or prison.

Crack-cocaine addict Timothy Henson, 34, had already served three prison terms for drug-related crimes and was facing a fourth for robbery. But this time, a social worker and his defense lawyer convinced a Kentucky judge to place him in a recovery center instead, where he has since graduated and now works as a mentor to others. "Each time they sent me to the penitentiary, I didn't really learn anything," said Henson.⁵⁵

This effort was part of a pilot program funded by Kentucky that placed social workers in public defenders' offices in four counties starting in October 2006. The goal was to see if social workers could help clients get treatment and avoid jail. At first it was a stretch, says Rob Sexton, a regional manager in the state Department of Public Advocacy who supervised several of the social workers. "For the first time, I started thinking about issues like the client's housing, physical health, mental health and family," he says.

While the goal was to help clients, the pilot program has saved the state money as well. A six-month analysis of the program showed that drug use dropped, participation in treatment programs tripled, recidivism rates declined and every dollar spent on a social worker saved the state \$3.25 in incarceration costs.⁵⁶

Social workers have always been involved in the criminal justice system, according to Kirsten Levingston, former director of public initiatives at New York University's Brennan Center for Justice. "But the role they played in the past was a really narrow one," she says. The social worker was brought in at the end of the case during sentencing. "Now social workers are being brought in at the front end of the case, and the use of social workers in this way seems to be increasing across the country."

Travis County, Texas (Austin), launched a Mental Health Public Defender Office last July — possibly the first of its kind in the nation — staffed by two lawyers, two master's-level social workers, two caseworkers and support staff. Director Jeanette Kinard says a typical client is a 60-year-old man with schizophrenia and early dementia who has been in and out of the criminal-justice system for years, usually for criminal trespass. "We got him housing in a group home in a better part of town, and he hasn't been arrested for six months," says Kinard. "That's just a huge success story for him."

Both Texas and Kentucky have money to continue their programs, but in Kentucky at least, no money to expand. Despite letters of support from several judges, the enthusiastic backing of many of the state's prosecutors and praise from key legislators, the state budget passed in April includes no additional funding. ■

OUTLOOK

Border Pressure

While federal courts handle far fewer criminal prosecutions than state courts, federal public defenders are also finding themselves under pressure, particularly along the Southwest border. That's the result of a U.S. government crackdown on illegal immigration that began more than a decade ago and has intensified since the 9/11 terrorist attacks.⁵⁷

The rising caseloads along the border and the resulting strain on local federal courts can be traced to the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, which provided funds to hire more Border Patrol agents. In addition, advances in technology now allow Border Patrol agents to compare fingerprints of detainees with a central FBI database and know within minutes whether the person has a criminal history or has been deported before. Illegally crossing the border after having been deported is a felony.

"We're finding that for every 10 people we're apprehending, at least one has a criminal record in the U.S.," said Gus Soto, supervisory Border Patrol agent in Tucson, Ariz., "and these are people we are, of course, prosecuting."⁵⁸

But federal public defenders, as well as prosecutors and judges, are finding it hard to cope. "The system is overwhelmed, and it's a lot harder to provide the individualized attention to the client that is, frankly, required of us,"

said Milagros Cisneros, an assistant federal public defender in Phoenix.⁵⁹

In addition to trolling for illegal immigrants with criminal histories, in selected areas of the border the government is also arresting those with no criminal background. It used to be that agents routinely sent illegal immigrants back across the border to Mexico, but in a new program, Operation Streamline, many first-time detainees are being prosecuted for illegal entry, a misdemeanor, and spending weeks or months in jail.

The new crackdown began in Del Rio, Texas, in December 2005, expanded to Yuma, Ariz., a year later, and then to Laredo, Texas, about a year after that. Proponents of the program say the threat of jail time is working. In the Del Rio sector, the number of people apprehended crossing the border dropped 46 percent between fiscal 2006 and 2007 and 68 percent in the Yuma sector.

"We're pleased because basically they're enforcing the law," said Louise Whiteford, president of the Houston-based Texans for Immigration Reform. It's long overdue."⁶⁰

This January, the Border Patrol took Operation Streamline to Tucson, a region with one of the busiest U.S. District Courts in the country. Border Patrol agents in the area apprehend on average more than 1,000 illegal immigrants a day and are aiming to prosecute 100 of them.

Now congressional supporters want to implement Operation Streamline along the entire border with Mexico.

Like her counterparts in other border areas that have seen an increase in prosecution of illegal immigrants, Heather Williams, first assistant federal public defender in Tucson, is concerned about Operation Streamline's impact on the ability of defenders to do their job.

"From the start, the federal public defender has thought that this was ill-advised," said Williams, who worries that her office will be able to handle fewer criminal cases.⁶¹

Notes

¹ Innocence Project, www.innocenceproject.org/Content/61.php.

² *Ibid.*

³ Samuel R. Gross, "Exonerations in the United States 1989 Through 2003," University of Michigan Law School, April 19, 2004. For background, see Kenneth Jost, "Death Penalty Controversies," *CQ Researcher*, Sept. 23, 2005, pp. 785-808; Sarah Glazer, "Serial Killers," *CQ Researcher*, Oct. 31, 2003, pp. 917-940, and Kenneth Jost, "DNA Databases," *CQ Researcher*, May 28, 1999, pp. 449-472.

⁴ Innocence Project, www.innocenceproject.org/docs/Neufeld_Congressional_Testimony.html.

⁵ "A Strategic Plan to Ensure Accountability & Protect Fairness in Louisiana's Criminal Courts," National Legal Aid & Defender Association, September 2006, p. 59.

⁶ "50 State and County Expenditures for Indigent Defense Services Fiscal Year 2005," American Bar Association, 2006, p. 3.

⁷ "Gideon's Broken Promise: America's Con-

tinuing Quest for Equal Justice," American Bar Association, 2004, pp. 38-39.

⁸ Susannah A. Nesmith, "In Debt, Young Lawyers Struggle to Make It," *The Miami Herald*, Section B1, May 1, 2007.

⁹ *Ibid.*

¹⁰ Michael Higgins, "Public Defenders Join Budget-Cuts Lawsuit," *Chicago Tribune*, Nov. 21, 2007, Metro Section, p. 11.

¹¹ Jason Riley, "The Governor's Budget," *The [Louisville] Courier-Journal*, Section News, Jan. 30, 2008, p. 13A.

¹² "One in 100: Behind Bars in America 2008," The Pew Center on the States, p. 7.

¹³ Robert M.A. Johnson, "Have All Convictions Become a Life Sentence?," American Bar Association, p. 1.

¹⁴ "Statement of Caseloads and Workloads," American Council of Chief Defenders, Aug. 24, 2007, p. 1.

¹⁵ "Gideon's Broken Promise," *op. cit.*, p. 18.

¹⁶ Brendan Riley, "Nevada High Court Orders Indigent Defense Reforms," *Las Vegas Review-Journal*, Jan. 4, 2008.

¹⁷ National Association of Criminal Defense Lawyers, www.nacdl.org/public.nsf/defenseupdates/missouri028.

¹⁸ J. J. Stambaugh, "Motion Filed to Reduce Caseload," *Knoxville News-Sentinel*, March 27, 2008, p. 1.

¹⁹ American Bar Association Standing Committee on Ethics and Professional Responsibility, Formal Opinion 06-441, May 13, 2006, p. 1.

²⁰ *Ibid.*

²¹ Michael P. Judge, "A Different View of Excessive Defender Caseload Issues," *Cornerstone*, Vol. 19, No. 1, p. 21.

²² Stambaugh, *op. cit.*

²³ "Gideon's Broken Promise," *op. cit.*, p. v.

²⁴ For background, see Kenneth Jost, "Prosecutors and the Law," *CQ Researcher*, Nov. 9, 2007, pp. 937-960.

²⁵ "Resources of the Prosecution and Indigent Defense Functions in Tennessee," The Spanenberg Group, June 2007, p. 5.

²⁶ "Gideon's Broken Promise," *op. cit.*, p. 21.

²⁷ Kevin Krause, "Judges rely on costlier lawyers," *The Dallas Morning News*, April 3, 2007, p. 1A.

²⁸ "Performance Audit: Office of Indigent Defense Services," Office of the State Auditor, North Carolina, February 2007, p. 7.

²⁹ "In Defense of Public Access to Justice," National Legal Aid & Defender Association, March 2004, p. 29.

³⁰ "A Report on Pre- and Post-Katrina Indigent Defense in New Orleans," Southern Center for Human Rights, March 2006.

About the Author

Barbara Mantel is a freelance writer in New York City whose work has appeared in *The New York Times*, the *Journal of Child and Adolescent Psychopharmacology* and *Mamm Magazine*. She is a former correspondent and senior producer for National Public Radio and has won several journalism awards, including the National Press Club's Best Consumer Journalism Award and Lincoln University's Unity Award. She holds a B.A. in history and economics from the University of Virginia and an M.A. in economics from Northwestern University.



³¹ Thomas J. Cole, "Governor's Contributors Rake in Jobs," *Albuquerque Journal*, June 13, 2004, p. 1.

³² D'Val Westphal, "Set State's Public Defenders Free," *Albuquerque Journal*, March 16, 2008, p. B2.

³³ "State Indigent Defense Commissions," The Spangenberg Group, December 2006, p. 1.

³⁴ *Ibid.*, p. 13.

³⁵ Alfonso A. Castillo, "Judge Raps Public Defender System," *Newsday* [New York], March 27, 2007, p. A19.

³⁶ James J. Tomkovicz, *The Right to the Assistance of Counsel: A Reference Guide to the United States Constitution* (2002), p. 9.

³⁷ *Ibid.*, p. 10.

³⁸ William M. Beaney, *The Right to Counsel in American Courts* (1955), p. 21.

³⁹ *Ibid.*, p. 21.

⁴⁰ Tomkovicz, *op. cit.*, p. 15. In spring 2008 Tomkovicz is a visiting professor at the UCLA School of Law teaching constitutional criminal procedure and evidence.

⁴¹ Beaney, *op. cit.*, p. 45.

⁴² *Powell v. Alabama*, 287 U.S. 45.

⁴³ *Johnson v. Zerbst*, 304 U.S. 458.

⁴⁴ Paul B. Wice, *Public Defenders and the American Justice System* (2005), p. 4.

⁴⁵ Anthony Lewis, *Gideon's Trumpet* (1964), p. 4.

⁴⁶ *Gideon v. Wainwright*, 372 U.S. 335.

⁴⁷ For background, see Kenneth Jost, "Sentencing Debates," *CQ Researcher*, Nov. 5, 2004, pp. 925-948, and Brian Hansen, "Kids in Prison," *CQ Researcher*, April 27, 2001, pp. 345-376.

⁴⁸ National Legal Aid and Defender Association, www.nlada.org/About/About_HistoryDefender.

⁴⁹ *Ibid.*; for background, see Kenneth Jost, "Plea Bargaining," *CQ Researcher*, Feb. 12, 1999, pp. 113-136.

⁵⁰ National Legal Aid and Defender Association, *op. cit.*

⁵¹ Norman Lefstein, quoted in "Gideon Undone: The Crisis in Indigent Defense Funding," American Bar Association in cooperation with the National Legal Aid & Defender Association, November 1982.

⁵² American Bar Association, "Ten Principles of a Public Defense Delivery System," Introduction, February 2002.

⁵³ Stephen Bright, "A grave injustice to the disadvantaged," *The Atlanta Journal-Constitution*, March 24, 2008, p. 11A.

⁵⁴ "2001 Public Defender Up-front Application Fees Update," The Spangenberg Group, December 2001.

FOR MORE INFORMATION

American Bar Association Standing Committee on Legal Aid & Indigent Defendants, 321 N. Clark St., Chicago, IL 60610; (800) 285-2221; www.indigent-defense.org. Assists in the reform and improvement of indigent defense systems across the country.

Brennan Center for Justice at NYU School of Law, 161 Avenue of the Americas, 12th Fl., New York, NY 10013; (212) 998-6730; www.brennancenter.org. A nonpartisan public policy and law institute that focuses on fundamental issues of democracy and justice.

Innocence Project, 100 Fifth Ave., 3rd Fl., New York, NY 10011; (212) 364-5340; www.innocenceproject.org. A nonprofit legal clinic affiliated with the Benjamin N. Cardozo School of Law at Yeshiva University dedicated to exonerating wrongfully convicted people through DNA testing and reforming the criminal-justice system to prevent future injustice.

National Association of Criminal Defense Lawyers, 1150 18th St., N.W., Suite 950, Washington, DC 20036; (202) 872-8600; www.nacdl.org. Supports the mission of the nation's criminal-defense lawyers to ensure justice and due process for persons accused of crime or other misconduct.

National District Attorneys Association, 99 Canal Center Plaza, Suite 510, Alexandria, VA 22314; (703) 549-9222; www.ndaa.org. A professional organization whose members come from the offices of district attorneys, state's attorneys, attorneys general and county and city prosecutors.

National Juvenile Defender Center, 1350 Connecticut Ave., N.W., Suite 304, Washington, DC 20036; (202) 452-0010; www.njdc.info. Provides support to public defenders, appointed counsel, law school clinical programs and nonprofit law centers to ensure quality representation in urban, suburban, rural and tribal areas.

National Legal Aid & Defender Association, 1140 Connecticut Ave., N.W., Suite 900, Washington, DC 20036; (202) 452-0620; www.nlada.org. Provides support and advocacy for legal aid and defender programs.

Pew Center on the States, c/o The Pew Charitable Trusts, 1025 F St., N.W., 9th Fl., Washington, DC 20004; (202) 552-2000; www.pewcenteronthestates.org. A nonprofit research organization working to advance state policies that serve the public interest.

Southern Center for Human Rights, 83 Poplar St., N.W., Atlanta, GA 30303; (404) 688-1202; www.schr.org. A nonprofit, public-interest law firm dedicated to enforcing the civil and human rights of people in the criminal-justice system in the South.

The Spangenberg Group, 1001 Watertown St., West Newton, MA 02465; (617) 969-3820; www.spangenberggroup.com. A nationally recognized research and consulting firm specializing in improving justice programs.

⁵⁵ Deborah Yetter, "Social workers help save costs of incarceration," *The [Louisville] Courier-Journal*, Feb. 26, 2008, p. 1A.

⁵⁶ Gerard "Rod" Barber and Ramona Stone, "Social Work Pilot Project, Evaluation Summary," Kent School of Social Work, University of Louisville, January 2008.

⁵⁷ For background, see the following *CQ Researcher* reports: Alan Greenblatt, "Immigration Debates," Feb. 1, 2008, pp. 97-120; Kenneth Jost, "Civil Liberties Debates," Oct. 24, 2003, pp. 893-916 and Patrick Mar-

shall, "Policing the Borders," Feb. 22, 2002, pp. 145-168.

⁵⁸ Faye Bowers, "Border Crackdown Jams US Federal Courts," *The Christian Science Monitor*, May 7, 2007, p. 1.

⁵⁹ Quoted in *ibid.*

⁶⁰ James Pinkerton, "Illegal Immigration Crackdown; Zero Tolerance, Major Impact," *The Houston Chronicle*, Nov. 20, 2007, p. 1.

⁶¹ "Program That Prosecutes Illegal Immigrants Expanding," *The Associated Press*, Jan. 14, 2008.

Bibliography

Selected Sources

Books

Beaney, William M., *The Right to Counsel in American Courts*, University of Michigan Press, 1955.

A legal scholar's history of the right to counsel in the United States covers the period from colonial times to just before the Supreme Court's landmark *Gideon v. Wainwright* decision.

Lewis, Anthony, *Gideon's Trumpet*, Vintage Books, 1964.

A renowned *New York Times* columnist and reporter tells the moving story of how a poor man's handwritten appeal led to one of the most important Supreme Court decisions of the 20th century.

Tomkovicz, James J., *The Right to the Assistance of Counsel: A Reference Guide to the United States Constitution*, Greenwood Press, 2002.

A law professor at the University of Iowa has written a comprehensive history and guide to the right to counsel in the United States.

Wice, Paul B., *Public Defenders and the American Justice System*, Praeger, 2005.

A professor of political science at Drew University colorfully profiles a reform-minded public defender's office in Newark, N.J.

Articles

Hughes, Polly Ross, "Service Combines Justice, Therapy," *The Houston Chronicle*, Jan. 2, 2007, p. 1.

Travis County, Texas, launches a Mental Health Public Defender Office, staffed by lawyers, social workers and caseworkers, to help clients get treatment and avoid jail.

Krause, Kevin, "Judges Rely on Costlier Lawyers; Study: Dallas County Could Save Millions Using Public Defense," *The Dallas Morning News*, April 3, 2007, p. 1A.

Judges in Dallas County, Texas, send more criminal indigent-defense cases to private lawyers than to the local public defender, and some say politics is at play.

Melo, Frederick, "If You Cannot Afford an Attorney, Prove It," *Saint Paul Pioneer Press*, Sept. 18, 2006, p. 1A.

Minnesota's Dakota County has a tiered system for indigent defense that links eligibility for public defense to income level and the severity of the charges.

Nesmith, Susannah A., "In Debt, Young Lawyers Struggle to Make It," *The Miami Herald*, May 1, 2007, p. 1.

Turnover is high among young prosecutors and public defenders in South Florida, who carry large student-loan debts on low salaries.

Wiese, Kelly, "Missouri Public Defenders Expect First Rejected Cases in Beginning of 2008," *Kansas City Daily Record*, Dec. 27, 2007.

Missouri's Public Defender Commission votes to begin refusing cases at its most burdened offices because of lack of funding.

Reports and Studies

American Bar Association, *Gideon's Broken Promise: America's Continuing Quest for Equal Justice*, 2004.

Public hearings on indigence defense reveal a system plagued by problems 40 years after the *Gideon v. Wainwright* decision, the ABA reports.

American Bar Association, *Ten Principles of a Public Defense Delivery System*, February 2002.

The ABA creates a practical guide for policy makers who are launching new, or improving existing, public-defense delivery systems.

Commission on the Future of Indigent Defense, *Final Report to the Chief Judge of the State of New York*, June 18, 2006.

New York state's county-based indigent-defense system is plagued by problems, including lack of funds, no standards, high caseloads, inadequate training and minimal client contact and investigation.

The Pew Center on the States, *One in 100: Behind Bars in America in 2008*, Feb. 28, 2008.

An examination of prison trends and costs by state finds that more than one in 100 Americans are now behind bars in state and federal prisons.

The Spangenberg Group, *Resources of the Prosecution and Indigent Defense Functions in Tennessee*, June 2007.

Twice as much funding is available for the prosecution of indigent defendants as for their defense in Tennessee, according to a nationally recognized research firm.

The Spangenberg Group, *State Indigent Defense Commissions*, December 2006.

A research firm that specializes in improving justice programs reports on trends in county and state funding and oversight of indigent defense.

State Auditor, North Carolina, *Performance Audit: Office of Indigent Defense Services*, February 2007.

Attorneys representing indigent defendants are not independent of judicial influence, do not provide competent legal representation and are underpaid and understaffed.

The Next Step:

Additional Articles from Current Periodicals

Capital Cases

Berry, Jahna, "Ending Jam of Capital Cases to Cost in 'Millions,'" *Arizona Republic*, March 8, 2007, p. 1.

Plans to fix the backlog of capital cases in Maricopa County, Ariz., could fall apart unless more money is infused into the public defender system.

Dewan, Shaila, and Brenda Goodman, "Capital Cases Stalling as Costs Grow Daunting," *The New York Times*, Nov. 4, 2007, p. A1.

States unwilling to pay for defending those charged with capital crimes may be unable to conduct executions.

Maggi, Laura, "Lawyers to Be Named in Capital Cases," *Times-Picayune* (New Orleans), Oct. 3, 2006, p. 1.

A New Orleans trial chief is working on contracts to secure attorneys for about 30 defendants indicted on capital crimes.

Constitutional Rights

"Lawsuit Seeks More Money for Public Defenders," *Grand Rapids Press*, Feb. 23, 2007, p. B6.

Advocates for poor criminal defendants say Michigan is in violation of both state and U.S. constitutions by not spending enough money on public defenders for the indigent.

Fields, Gary, "Native Americans on Trial Often Go Without Counsel," *The Associated Press*, Feb. 1, 2007.

Native Americans aren't assured the right to an attorney because Indian tribes are considered sovereign nations by the federal government.

Thalji, Jamal, "U.S. Constitution Creates Legal Odd Couple," *The St. Petersburg Times*, Sept. 30, 2006, p. 2.

The constitutional provision ensuring defendants the right to an attorney has given a white supremacist who is a career criminal a prominent lawyer — who is black — to defend him.

Effectiveness

Bowers, Faye, "Border Crackdown Jams US Federal Courts," *The Christian Science Monitor*, May 7, 2007, p. 1.

The government's crackdown on illegal immigration has overwhelmed the public defense system in Arizona.

Hoffman, Morris B., "Free-Market Justice," *The New York Times*, Jan. 8, 2007, p. A19.

Public defenders often perform better than private lawyers when it comes to the most serious felonies, according to a Colorado state judge.

Parker, Laura, "New Orleans Judge May Free Dozens," *USA Today*, April 2, 2007, p. 3A.

A judge in New Orleans plans to release 42 criminal defendants over what he calls a lack of adequate legal representation.

Rachlin, Andrew, "Rights of Defense," *Governing*, January 2007, p. 42.

Indigent defendants and defendants who can afford private counsel are found guilty at comparable rates, but the incarceration rate is noticeably higher for the indigent.

Funding Issues

"State Can't Scrimp on Public Defenders," *The St. Petersburg Times*, Jan. 21, 2008, p. 14A.

Twenty public defender offices in Florida are facing critical budget shortfalls due to decisions made by the state legislature.

Fausset, Richard, "Murder Trial Cost Puts the Heat on Georgia Judge," *Los Angeles Times*, Oct. 26, 2007, p. A12.

A high-profile multiple-murder case in Georgia has drained the state's budget for public defenders, bringing many other capital cases to a standstill.

Higgins, Michael, "Public Defenders Join Budget-Cuts Lawsuit," *Chicago Tribune*, Nov. 21, 2007, p. B11.

The union representing assistant public defenders in Cook County, Ill., is challenging county budget cuts that would effectively lay off some attorneys.

Jackman, Tom, "Lawyers for Indigent Up for Pay Increase," *The Washington Post*, March 4, 2007, p. C6.

Both houses in Virginia's legislature have unanimously voted to waive limits on fees paid to court-appointed attorneys and to increase public defenders' salaries by 13 percent.

CITING CQ RESEARCHER

Sample formats for citing these reports in a bibliography include the ones listed below. Preferred styles and formats vary, so please check with your instructor or professor.

MLA STYLE

Jost, Kenneth. "Rethinking the Death Penalty." *CQ Researcher* 16 Nov. 2001: 945-68.

APA STYLE

Jost, K. (2001, November 16). Rethinking the death penalty. *CQ Researcher*, 11, 945-968.

CHICAGO STYLE

Jost, Kenneth. "Rethinking the Death Penalty." *CQ Researcher*, November 16, 2001, 945-968.

In-depth Reports on Issues in the News

Are you writing a paper?

Need backup for a debate?

Want to become an expert on an issue?

For 80 years, students have turned to *CQ Researcher* for in-depth reporting on issues in the news. Reports on a full range of political and social issues are now available. Following is a selection of recent reports:

Civil Liberties

Immigration Debate, 2/08
Prison Reform, 4/07
Voting Controversies, 9/06
Right to Die, 5/05

Crime/Law

Gun Violence, 5/07
Patent Disputes, 12/06
Sex Offenders, 9/06
Treatment of Detainees, 8/06
War on Drugs, 6/06

Education

Reading Crisis? 2/08
Discipline in Schools, 2/08
Student Aid, 1/08
Racial Diversity in Public Schools, 9/07
Stress on Students, 7/07

Environment

Buying Green, 2/08
Future of Recycling, 12/07
Disappearing Species, 11/07
Fish Farming, 7/07

Health/Safety

Preventing Memory Loss, 4/08
Future of the Airlines, 3/08
Aging Infrastructure, 9/07
Wounded Veterans, 8/07
Fighting Superbugs, 8/07

International Affairs/Politics

D.C. Voting Rights, 4/08
Cuba's Future, 7/07
Prosecutors and Politics, 6/07
Electing the President, 4/07

Social Trends

Gender Pay Gap, 3/08
Rise of Megachurches, 9/07
Corporate Social Responsibility, 8/07
Shock Jocks, 6/07

Terrorism/Defense

Real ID, 5/07
New Strategy in Iraq, 2/07

Youth

Debating Hip-Hop, 6/07
Drinking on Campus, 8/06

Upcoming Reports

Cost of Iraq War, 4/25/08

Cyber-Bullying, 5/2/08

Financial Markets, 5/9/08

Prostitution Debate, 5/23/08

Changing U.S. Demographics, 5/30/08

U.S.-Russia Relations, 6/6/08

ACCESS

CQ Researcher is available in print and online. For access, visit your library or www.cqresearcher.com.

STAY CURRENT

To receive notice of upcoming *CQ Researcher* reports, or learn more about *CQ Researcher* products, subscribe to the free e-mail newsletters, *CQ Researcher Alert!* and *CQ Researcher News*: <http://cqpress.com/newsletters>.

PURCHASE

To purchase a *CQ Researcher* report in print or electronic format (PDF), visit www.cqpress.com or call 866-427-7737. Single reports start at \$15. Bulk purchase discounts and electronic-rights licensing are also available.

SUBSCRIBE

Annual full-service *CQ Researcher* subscriptions—including 44 reports a year, monthly index updates, and a bound volume—start at \$803. Add \$25 for domestic postage.

CQ Researcher Online offers a backfile from 1991 and a number of tools to simplify research. For pricing information, call 800-834-9020, ext. 1906, or e-mail librarysales@cqpress.com.

CQ RESEARCHER PLUS ARCHIVE

GET ONLINE ACCESS TO VITAL
ISSUES FROM 1923 TO THE PRESENT



CQ Researcher Plus Archive delivers fast, online access to every *CQ Researcher* report from 1991 to the present, *PLUS* lets you explore the complete archive of *Editorial Research Reports**

from 1923-1990. Search and browse more than 3,600 in-depth reports.

Loaded with handy online features, *CQ Researcher Plus Archive* provides the trustworthy reporting and the advanced online functionality today's researchers demand. The new "Issue Tracker" feature provides quick links to past and present reports on the specific topics you need.

For a free trial, visit <http://library.cqpress.com/trials>.

For pricing information, call 1-800-834-9020, ext. 1906 or e-mail librarymarketing@cqpress.com.

*Editorial Research Reports, the predecessor to *CQ Researcher*, provides the same expert, nonpartisan reporting on the vital issues that have shaped our society.

CQ Press • 2300 N Street, NW, Suite 800 • Washington, DC 20037